

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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F/V SOFTWARE, L.L.C., :  
 :  
 Plaintiff, : Civil Action  
 : No. 05-11286-PBS  
 v. :  
 :  
 ASPEN TECHNOLOGY, INC., :  
 :  
 Defendant. :  
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**REQUEST FOR REFERENCE FOR ALTERNATIVE DISPUTE RESOLUTION**

Defendant Aspen Technology, Inc. (“Aspen”), hereby respectfully requests that this Court refer the above-captioned action for alternative dispute resolution before Judge Swartwood in conjunction with Aspen Technology, Inc. v. F/V Software, L.L.C., Civ. No. 04-11830-PBS (D. Mass.) (the “Aspen Action”), which has already been referred to Judge Swartwood. As grounds for this request, Aspen states as follows:

1. This action is the second-filed of two related actions pending before this Court.
2. On August 23, 2004, Aspen commenced the Aspen Action by filing in the United States District Court for the District of Massachusetts a Complaint for Declaratory Relief. The action concerns Aspen’s and F/V Software, L.L.C.’s (“F/V’s”) respective rights and performance under a June 15, 2001 registration rights agreement.
3. Eight days later, F/V filed a Complaint for Breach of Contract against Aspen in the United States District Court for the Eastern District of Louisiana. F/V Software, L.L.C. v. Aspen Technology, Inc., Civ. No. 04-2485 (E.D. La.) (the “F/V

Action”). The F/V Action also involves the parties’ respective rights and performance under the June 15, 2001 registration rights agreement.

4. On September 30, 2004, F/V moved this Court to dismiss the first-filed, Aspen Action in favor of its second-filed, F/V Action. On April 29, 2005, Magistrate Judge Alexander entered an Order with a Report and Recommendation recommending that this Court deny the motion. On May 19, 2005, the Court entered the following Electronic Order:

AFTER REVIEW OF THE OBJECTIONS, I ADOPT THE REPORT AND RECOMMENDATION. IN LIGHT OF F/V’S DESIRE TO NEGOTIATE, I REFER THE MATTER TO MEDIATION FORTHWITH. I ADD ONLY THAT F/V HAS APPARENTLY FILED SUIT IN LOUISIANA WHICH BUTTRESSES JUDGE ALEXANDER’S CONCLUSION THERE WAS A REASONABLE APPREHENSION OF SUIT.

5. As a result of the Court’s Order, the Aspen Action was thereupon referred to mediation; and the mediation was subsequently assigned to Judge Swartwood.

6. On June 13, 2005, the Court in the Eastern District of Louisiana, upon motion by F/V and consent of Aspen, transferred the F/V Action to this District. In the Transfer Order (docket entry number 11 in the Aspen Action), the Louisiana Court noted that the two actions “involve[] the same parties, issues, and facts.” Id. at 1.

7. Upon transfer, the F/V Action was assigned to Judge Keeton. On November 15, 2005, this Court issued a Notice of Reassignment, approving the reassignment of this action from Judge Keeton to this Court as a related action.

8. On December 2, 2005, Judge Swartwood issued a Notice Of And Order Regarding Mediation in the Aspen Action, notifying the parties of a mediation conference before the Court on Monday, December 12, 2005.

9. Reference of the above-captioned action to the same mediation process would permit these related cases to be mediated together, thus conserving judicial and private resources.

WHEREFORE, Aspen respectfully requests that the Court grant its Request For Reference For Alternative Dispute Resolution and grant such other and further relief as this Court deems just and proper.

Dated: December 2, 2005  
Boston, Massachusetts

Respectfully submitted,

/s/ Justin J. Daniels  
Thomas J. Dougherty (BBO #132300)  
Justin J. Daniels (BBO #656118)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Beacon Street  
Boston, Massachusetts 02108  
(617) 573-4800

Counsel for Defendant Aspen Technology, Inc.

**Local Rule 7.1 Certification**

The undersigned hereby certifies that counsel for Aspen contacted counsel for F/V Software on December 2, 2005 in an effort to resolve the issues in this request. However, F/V has not responded to Aspen's request.

Dated: December 2, 2005

/s/ Justin J. Daniels  
Justin J. Daniels

**Certificate of Service**

I, Justin J. Daniels, hereby certify that, on December 2, 2005, I caused a true copy of the foregoing Request For Reference For Alternative Dispute Resolution to be served electronically upon counsel for F/V Software, LLC, Terrence O'Brien, Esq.

Dated: December 2, 2005

/s/ Justin J. Daniels  
Justin J. Daniels